

To: Mark Young
From: H.I. Schiller
Date: 2-3-97

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Attached is a copy of a letter that I received from one of my retailers. I discussed the letter with Marshall and he asked me to forward a copy to you.

sincerely yours,
Howie Schiller

51851 8250



New York State
**FOOD
MERCHANTS**
Association, Inc.



UPDATE ON ISSUES AND EVENTS FOR NEW YORK STATE FOOD EXECUTIVES

NOV/DEC 1996

ISSUE HIGHLIGHTS:

- Federal Tobacco Regs Adopted
- NYS Attorney General To Crackdown On Underage Tobacco Sales
- Action Alert: Urge Governor To Request Food Stamp Waiver; Ask State To Adopt Federal Baler Law

FDA TOBACCO REGS IN
EFFECT 2/28/97
... ID Checks For
Those 27 & Under

According to the Food Marketing Institute (FMI) the Food and Drug Administration's (FDA) final rule regulating tobacco sales to minors contains several provisions that will negatively affect retailers of cigarettes and smokeless tobacco. The rule is practically identical to the proposed rule issued by FDA last November, and covers many aspects of the distribution of these products. The following is an overview of the provisions that will affect merchandising and employees in stores.

Mandatory Face-to-Face ID Checks of Anyone Purchasing Cigarettes or Smokeless Tobacco Under 27 Years Old - As of February 28, 1997 retail sales clerks will be required to check identification for anyone purchasing tobacco or smokeless tobacco under the age of 27. This means every person who is actually younger than 27, not just those that appear to be under 27. Penalties will be in effect for failure to check ID, so even if a person is of legal age to purchase the product (i.e. 18 years-old), failure to check is still a violation.

No Self-Service Displays or Vending Machines Are Allowed - Beginning August 1997, all self-service displays and vending machines will be banned in areas accessible to persons under 18. Promotional allowances for tobacco products may be affected in some cases.

Tobacco Products Covered and Advertising/Sponsorships - The FDA rule applies to cigarettes and smokeless tobacco only and does not cover pipe tobacco or cigars. Retailers must ensure that all in-store advertising for tobacco is in a "tombstone" format (black and white lettering). Effective August 28, 1997 this includes shopping baskets, display racks, clocks, door decals, signs, etc. The final rule permits tobacco companies to sponsor events in corporate name only. The sponsorship of events ban goes into effect on February 28, 1998.

Retailers are Responsible - Under the rule, retail sales clerks and minors will not be held accountable for violations. Retailers will be held completely responsible. FDA expressly declined to impose penalties on minors who purchase cigarettes and adults who purchase for them. The rule also states explicitly that retailers will be responsible for their employees who fail to comply with the law and that FDA will not penalize employees in any way.

License Fees - FDA rejected proposals during the comment period which would have imposed federal license requirements on retailers. However, it is expected in the 105th Congress that legislation will be introduced on the tobacco issue and the license fee proposal could be included.

Legal challenges to the regulations have been filed and will probably come before a judge by February 1997. Plaintiffs are seeking summary judgment. If that is denied, subsequent litigation could prove lengthy and prompt (continued)

H.I. Schiller
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51851 8251